

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

J&K CONSULTANTS, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No.
	)	
SUAREZ CORPORATION	)	<b>JURY TRIAL DEMANDED</b>
INDUSTRIES,	)	
	)	
Defendant.	)	

**COMPLAINT**

AND NOW comes Plaintiff J&K Consultants, Inc. (“J&K Consultants” or “Plaintiff”), by and through its undersigned counsel, and hereby files this Complaint against Defendant Suarez Corporation Industries (“Suarez” or “Defendant”), averring as follows:

**Parties**

1. Plaintiff J&K Consultants is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, having its principal office and place of business located at 2605 Nicholson Road, Suite 1140, Sewickley, Pennsylvania 15143.

2. J&K Consultants is in the business of health and welfare benefits consulting, including providing businesses with compliance and risk-management services relating to employee benefit programs.

3. Defendant Suarez is a corporation organized and existing under the laws of the State of Ohio, having a principal place of business located at 7800 Whipple Ave. NW, North Canton, OH 44720.

4. Suarez is in the business of direct marketing and advertising various products.

**Jurisdiction and Venue**

5. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1332, diversity of citizenship, in that the action is between citizens of different states and the matter in controversy, exclusive of interest and costs, exceeds the sum or value of \$75,000.

6. This Court has general personal jurisdiction over Suarez because Suarez makes a substantial number of direct sales to Pennsylvania residents, regularly solicits business in Pennsylvania, and advertises in Pennsylvania via newspapers and direct mailings to Pennsylvania as well as on radio and television stations broadcast in Pennsylvania.

7. In the alternative, this Court has specific personal jurisdiction over Suarez because Suarez's contacts with Pennsylvania were instrumental in both the formation and the breach of the contract that serves as the basis of this action. Suarez subjected itself to the jurisdiction of the Pennsylvania courts when it purposefully availed itself of the opportunity to do business in Pennsylvania by entering into a contract with a Pennsylvania corporation, J&K Consultants, that was to be substantially performed in Pennsylvania, and was negotiated by directing communications to J&K Consultants in Pennsylvania. Further, during the course of performance of the contract Suarez received invoices and communications from J&K Consultants in Pennsylvania and directed payments and communications to J&K Consultants in Pennsylvania.

8. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to this matter occurred in the Western District of Pennsylvania, where J&K Consultants is located; and, in the alternative, pursuant to

28 U.S.C. § 1391(c) because defendants are subject to this Court's personal jurisdiction in the Western District of Pennsylvania.

**The Agreement**

9. On or around December 1, 2009, J&K Consultants and Suarez entered in a Consulting Agreement (the "Agreement") in which the parties agreed that J&K Consultants would provide Suarez with certain services necessary for the funding, development, implementation and administration of employee accident, health, and welfare plans (hereinafter "Employee Benefit Plans"). A true and correct copy of the Agreement is attached hereto as **Exhibit A** and incorporated herein by reference.

10. Pursuant to the Agreement, the initial term of the Agreement was for three years, or until December 1, 2012. Thereafter, the Agreement automatically renewed three times - each time for an additional period of one year. Each renewal occurred because, as contemplated by the Agreement, no notice was given by either party to the other, within 90 days of the expiration of the current term, of its intent not to renew. Accordingly, the Agreement, under its terms, is active until at least December 1, 2015.

11. J&K Consultants agreed generally under the Agreement to assist Suarez in the development and implementation of Employee Benefit Plans. Specifically, pursuant to Section II of the Agreement, J&K Consultants agreed to provide Suarez with administrative services including: (a) preparing all required Employee Benefit Plan documents and delivering those documents to Suarez for execution; (b) receiving and possessing all reimbursement requests for all Employee Benefit Plan participants in a timely and efficient manner; (c) preparing and forwarding payment to participants for reimbursements of premiums and deductibles and co-pays; (d) maintaining appropriate records to track the amount of reimbursements paid to each

Employee Benefit Plan participant and to ensure that no participant was reimbursed more than his or her allowable annual reimbursement pursuant to the plan; (e) preparing monthly reports for Suarez that detailed the Employee Benefit Plan utilization and the amount of the disbursements for the current month and the year to date; and (f) preparing for Suarez's sign-off of the annual plan discrimination tests when necessary.

12. Additionally, pursuant to Section III of the Agreement, Suarez appointed J&K Consultants as a Broker of Record with respect to Suarez's health care and related programs. In this regard, J&K Consultants agreed to provide Suarez with broker services including: (a) negotiating with carriers interested in bidding on the in-force lines of coverage and/or coverages that may be added in the future; (b) aiding in the underwriting of these lines of coverage; (c) reinsurance evaluations; (d) Preferred Provider Organization evaluations; (e) insurance company evaluations; (f) Third Party Administration evaluations; (g) consulting in the drafting of plan documents; (h) COBRA consulting; (i) aiding in the drafting of plan documents (Section 125); (j) general marketing of all renewals; and (k) ongoing maintenance.

13. In consideration of J&K Consultants providing the administrative, consulting and broker services enumerated in Sections I, II, and III of the Agreement, Suarez agreed to pay fees to J&K Consultants that included both flat monthly fees as well as fees calculated as a percentage of Suarez's overall savings resulting from the implementation of the Agreement.

14. Specifically, pursuant to Exhibit C of the Agreement, Suarez agreed to pay J&K Consultants:

- (a) 20% of [Suarez's] Savings following enrollment of each Class of Participants in each Plan each year;
- (b) \$3,166.00 per month for Broker of Record services;

(c) \$8.00 per employee enrolled in the [J&K Consultants' funding procedure for Employee Plan Benefits] per month for Administrative Services; and

(d) any and all printing expenses such as Plan Documents, checks, etc., upon prior approval.

15. Thereafter, and in compliance with all the terms and conditions set forth in the Agreement, J&K Consultants provided the services required under the Agreement.

16. In accordance with the Agreement, J&K Consultants invoiced Suarez each time payment under the Agreement was required. Payments by Suarez were due 30 days from the date of each invoice.

17. Suarez has not paid the outstanding balance, now past due, of \$225,058.49 for the services provided by J&K Consultants to Suarez between January 1, 2014 and June 5, 2015 and invoiced between May 5, 2014 and June 5, 2015.

18. Despite repeated efforts by J&K Consultants to collect the \$225,058.49, Suarez has continuously refused to pay the amount due.

19. Additionally, Suarez, in violation of the Agreement, appointed a new Broker of Record in April 2015 and breached its Agreement with J&K Consultants. A true and correct copy of a letter dated April 24, 2015 from Suarez to HCC is attached hereto as **Exhibit B** and incorporated herein by reference.

20. Accordingly, the Agreement, which was to run until at least December 1, 2015, has been wrongfully terminated by Suarez.

21. Due to Suarez's wrongful termination, J&K Consultants is entitled to payment for the remainder of the Agreement through December 1, 2015, an amount that exceeds \$150,000.00.

**Count I**  
**Breach of Contract**

22. The averments contained in paragraphs 1 through 21 above, are incorporated herein by J&K Consultants and reasserted as though set forth fully at length.

23. The Agreement constitutes a valid contract under which Suarez agreed to fully compensate J&K Consultants for all the services that J&K Consultants provided for Suarez.

24. At all times material hereto, J&K Consultants fully performed its obligations and duties owed to Suarez pursuant to the Agreement.

25. Suarez has failed to pay amounts due to J&K Consultants under the Agreement in the amount of \$225,058.49.

26. The actions and omissions of Suarez in failing and/or refusing to pay J&K Consultants in full for its consulting services pursuant to the Agreement constitutes a breach of Suarez's obligations to J&K Consultants under the Agreement.

27. Suarez has further breached the Agreement by terminating the Agreement wrongfully and without cause, and by appointing a new Broker of Record unilaterally and without the consent of J&K Consultants.

28. Suarez's wrongful termination of the Agreement has deprived J&K Consultants of the benefits it was entitled to receive under the Agreement through the remaining term of the Agreement, through December 1, 2015.

29. J&K Consultants has been damaged as a direct and proximate result of Suarez's breaches and wrongful termination in the amount of \$225,058.49 for services provided under the Agreement and not paid for, and at least \$150,000.00 for the payments due under the Agreement through the end of the current term, along with all other incidental and consequential damages.

30. J&K Consultants has performed any and all conditions and obligations precedent to its right to assert these claims against Suarez.

WHEREFORE, Plaintiff J&K Consultants, Inc. respectfully requests that judgment be entered in its favor and against Defendant Suarez Corporation Industries in the amount of at least \$375,058.49, plus incidental and consequential damages and pre-judgment interest, and such other and further relief as the Court may deem just and equitable under the circumstances.

**Count II**  
**Unjust Enrichment/Quantum Meruit**

31. The averments contained in paragraphs 1 through 30, above, are incorporated herein by J&K Consultants and reasserted as though set forth fully at length.

32. In the alternative, J&K Consultants is entitled to the fair value of the services it provided to Suarez.

33. As outlined above, J&K Consultants has conferred on Suarez a benefit in the form of services provided by J&K Consultants.

34. Suarez has, with knowledge, received, enjoyed and benefitted from the services provided by J&K Consultants.

35. Allowing Suarez to accept, enjoy and benefit from the services of J&K Consultants without paying for those services would result in unjust enrichment to Suarez for the value of those services and costs in the present amount of not less than \$225,058.49.

36. As a direct and proximate result of Suarez's retention of said benefit without payment, J&K Consultants has been damaged in an amount in of \$225,058.49.

37. J&K Consultants is entitled to be paid the full value for the services provided, along with the other costs incurred for the benefit of Suarez.

WHEREFORE, Plaintiff J&K Consultants, Inc. respectfully requests that judgment be entered in its favor and against Defendant Suarez Corporation Industries in the amount of \$225,058.49, plus incidental and consequential damages and pre-judgment interest, and such other and further relief as the Court may deem just and equitable under the circumstances.

BABST, CALLAND,  
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